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LETTER RULING

Letter Ruling 20-1: Sales at Cash Registers Located in the Restaurant Areas of a Supermarket

DATE:

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REFERENCED SOURCES:

[Massachusetts General Laws](https://malegislature.gov/Laws/GeneralLaws) (<https://malegislature.gov/Laws/GeneralLaws>)

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I. Introduction

We have received your Letter Ruling request submitted on behalf of your client, ----- (“Supermarket”), regarding purchases made at cash registers located in the restaurant areas of Supermarket’s establishments. The request notes that, in recent years, Supermarket’s customers have increasingly completed purchases at those registers consisting of both meals offered for sale in the restaurant areas and supermarket products offered for sale in its conventional supermarket areas. You ask whether otherwise tax-exempt supermarket products offered for sale in the supermarket areas are subject to tax when purchased at cash registers in the restaurant areas. For the reasons stated below, we conclude that under Supermarket’s plan to implement various controls to separately track the sales of meals and supermarket products at all cash registers in its supermarket establishments, otherwise tax-exempt supermarket products will not be subject to tax when processed through a cash register in Supermarket’s restaurant areas.

II. Facts

The following is your representation of the facts upon which we base this ruling. Supermarket is in the business of operating numerous supermarket establishments in Massachusetts, including ----- branded locations (the “supermarket establishments”). The supermarket establishments historically have consisted principally of a supermarket area, from which food products and household items (“supermarket products”) are offered for sale, traditional bakery and delicatessen areas, and restaurant parts.^[1] (#_ftn1) Recently, Supermarket has opened supermarket establishments in more densely populated city locations. In order to use the limited space

in such establishments efficiently, Supermarket has created certain new restaurant parts that exclusively sell meals, including coffee and single-serve pastries, in the middle of the establishment (“restaurant areas”). These restaurant areas have their own designated space within the store, with their own counters and serving areas. Some of these restaurant areas may also include a cash register.^[2] ([#_ftn2](#))

Supermarket’s customers making purchases in these restaurant areas have increasingly used the cash registers located in the restaurant areas to process their entire purchase, which may consist of taxable and exempt supermarket products offered for sale in the supermarket areas as well as meals served in the restaurant areas. At some supermarket establishments, the cash registers located in the restaurant areas are situated closer to the exit than the cash registers located in the Supermarket areas and thus may present a more convenient means for customers to process their purchases.

Currently, Supermarket employs two different methodologies for charging tax on the items it sells, depending on the location of the cash register used. The taxability of an item processed through a cash register located in the supermarket area is determined by the item’s “Universal Product Code” or “Price Look-Up” code (collectively “UPC”). Supermarket determines whether an item is taxable or exempt under 830 CMR 64H.6.5(6)(a) and codes the point of sale system software of the cash registers located in the supermarket area to attribute taxability (the “UPC tax designation”) accordingly when scanning the item’s UPC. The UPC assigned to such an item is the same in all of Supermarket’s supermarket establishments. Items located for sale in the restaurant areas are generally affixed with a UPC read by all cash registers in the supermarket establishment as taxable. In contrast to the cash registers located in the supermarket areas, the cash registers located in the restaurant areas assume that all purchases are of meals and charge tax on a customer’s total purchase, rather than attributing taxability item-by-item.

Because of the increasing number of supermarket products being purchased at restaurant area cash registers, Supermarket seeks to change the methodology used at those registers to avoid charging tax on otherwise tax-exempt supermarket products. Supermarket has proposed implementing the following controls to separately track sales of meals and otherwise tax-exempt items: Supermarket will reconfigure the cash registers located in the

restaurant areas to operate in the same manner as the cash registers located in the supermarket areas, and will charge tax on each item in accordance with the item's UPC tax designation. Supermarket will also ensure that all items offered for sale in the restaurant areas will bear a taxable UPC. Furthermore, Supermarket will segregate meals from supermarket products: items that are meals will be offered for sale exclusively in the restaurant parts, including any restaurant areas in its supermarket establishments, while items that are not meals will be offered for sale exclusively in the supermarket areas. Supermarket's books and records will identify each item sold, including a description of the item, the item's UPC and its UPC tax designation.

III. Issue

Whether Supermarket must charge tax on otherwise tax-exempt supermarket products purchased at cash registers located in restaurant areas, assuming Supermarket implements various controls to separately track sales of meals and otherwise tax-exempt items, as further described below.

IV. Ruling

Assuming that Supermarket implements the various controls to separately track sales of meals and otherwise tax-exempt items as represented in this ruling, otherwise tax-exempt supermarket products are not subject to tax when purchased at a cash register in one of Supermarket's restaurant areas.

V. Discussion

Under the Massachusetts General Laws, sales of food products^[3] ([#_ftn1](#)) for human consumption are exempt from tax. G.L. c. 64H, § 6(h). However, meals sold by a restaurant are subject to the Massachusetts sales tax.^[4] ([#_ftn2](#)) *Id.* In Massachusetts, a "meal" is defined as "any food or beverage prepared for human consumption and provided by a restaurant." *Id.* A restaurant, in turn, is defined as an eating establishment primarily engaged in the business of selling meals. *Id.*; 830 CMR 64H.6.5(5)(b)1. In

general, all sales by a restaurant of food or beverages, or both, that it serves and presents in a manner that is reasonably and commonly considered a meal, are subject to tax. 830 CMR 64H.6.5(5)(d). The following items sold by a restaurant are not considered meals: (1) food sold by weight, liquid or dry measure, count, or in unopened original containers or packages, provided that such foods are commonly sold in such manner in a retail food store which is not a restaurant; (2) beverages in unopened original containers or packages when sold as a unit having a capacity of at least twenty-six fluid ounces; or (3) bakery products sold in units of six or more. See G.L. c. 64H, § 6(h).

G.L. c. 64H, § 6(h) provides that delicatessens, groceries, markets, and bakeries are not restaurants, except for any part of such establishments that engage “in the sale of dinners, luncheons. . . sandwiches, snacks, pizzas, and other similar items which are commonly sold at snack bars, coffee shops, or luncheon counters.” These establishments are generally considered to be stores not primarily engaged in the sale of meals, and their sales of food or beverages are generally subject to tax only when served for immediate consumption. 830 CMR 64H.6.5(6)(a). However, these stores may contain a “restaurant part,” an area, section, or counter within a store from which meals are sold, which is treated as a restaurant. 830 CMR 64H.6.5(5)(c). All items offered for sale in such restaurant parts are subject to tax.^[5] (#_ftn3) Regardless of whether an establishment is a store or a restaurant the establishment bears the responsibility for determining whether a particular item is subject to tax. G.L. c. 64H, § 8(a). Absent the separate tracking by an establishment of the sales of meals and supermarket products at all of its cash registers, all sales made at a restaurant or restaurant part are sales of meals subject to tax.

Supermarket attests that under its plan, Supermarket will implement various controls to separately track the sales of meals and supermarket products at all cash registers in its supermarket establishments in the following manner: (1) Supermarket will ensure that meals are offered for sale only in the restaurant parts, including the restaurant areas of a supermarket establishment, while exclusively offering for sale all other items in its supermarket areas; (2) Supermarket will affix all products sold in the restaurant areas with UPCs coded as taxable; (3) Supermarket will maintain books and records that identify and describe all items sold, list the items’ UPCs along with their UPC tax designation, and provide the total tax amounts collected and remitted. Supermarket’s plan is intended to

ensure that all products sold in the restaurant areas will be taxed regardless of the cash register used.^[6] ([#_ftn5](#))

As a seller of meals, Supermarket has the responsibility for determining the taxability of the items it sells in accordance with G.L. c. 64H, § 6(h) and 830 CMR 64H.6.5. For any items Supermarket determines are not subject to tax, Supermarket bears the burden of proving such items are tax-exempt. To the extent that Supermarket adheres to the processes outlined above in separately tracking the sales of meals and supermarket products at all of its cash registers in its supermarket establishments, otherwise tax-exempt supermarket products will not be subject to tax when processed through a cash register in one of Supermarket's restaurant areas.^[7] ([#_ftn5](#))

VI. Conclusion

Based on the analysis above and assuming that Supermarket adheres to its representations that its plan will implement various controls to separately track the sales of meals and supermarket products at all cash registers in its supermarket establishments, we conclude that otherwise tax-exempt supermarket products are not subject to tax when purchased at a cash register in one of Supermarket's restaurant areas.

We emphasize the narrow factual context of this ruling, as the foregoing analysis applies to the facts and circumstances of one taxpayer's particular plan for differentiating between store and restaurant sales.

Very truly yours,

/s/ Kevin W. Brown

Kevin W. Brown
Acting Commissioner of Revenue

KWB:RHF:dbb

LR 20-1

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[\[1\] \(#_ftnref1\)](#) As described in 830 CMR 64H.6.5(5)(c), a restaurant part is an area, section, or counter within a store from which meals are sold.

[\[2\] \(#_ftnref2\)](#) In addition to the restaurant areas within these supermarket establishments, Supermarket maintains separate restaurant locations serving meals that are situated outside of some of its supermarket establishments, such as stand-alone bakery cafes. These separate restaurant locations may be situated adjacent to the supermarket establishment. Supermarket treats these locations as independent restaurants separate and apart from the supermarket establishments, and charges tax on all purchases made therein. Supermarket does not seek a ruling with respect to purchases made at those independent restaurants. Nevertheless, to the extent that a supermarket establishment maintains a separate restaurant location and allows customers to purchase products from an adjacent supermarket establishment at the cash registers located in such restaurant, the restaurant would be required to charge tax on otherwise tax-exempt supermarket products unless Supermarket developed controls, equivalent to those considered in this ruling, to ensure tax was imposed only on taxable items.

[\[3\] \(#_ftnref1\)](#) Food products generally include meat and meat products, vegetables and vegetable products, and fruit and fruit products, but do not include meals sold by restaurants. G.L. c. 64H, § 6(h).

[\[4\] \(#_ftnref2\)](#) In municipalities that have accepted it, there is also a local option meals tax imposed on the sale of meals. G.L. c. 64L, § 2.

[\[5\] \(#_ftnref3\)](#) Certain items sold by a restaurant are exempt from tax, as described above. See M.G.L. c. 64H, § 6(h).

[\[6\] \(#_ftnref4\)](#) Nothing in this ruling supersedes or alters the rules pertaining to separate bakery or delicatessen parts of a store as set forth in 830 CMR 64H.6.5. Vendors maintaining separate bakery or delicatessen parts must continue to operate these parts and determine the taxability of items sold therefrom in accordance with 830 CMR 64H.6.5.

[\[7\]](#) ([#_ftnref5](#)) This ruling is consistent with the determination reached in Letter Ruling 12-2. Letter Ruling 12-2 concluded that prepared salads were taxable meals under G.L. c. 64H, § 6(h) and 830 CMR 64H.6.5 and noted that the part of a supermarket from which they were sold was immaterial to that determination. The ruling at hand makes no determination about the taxability of items sold by Supermarket. Vendors of meals are responsible for properly determining the taxability of the items they sell in a manner consistent with G.L. c. 64H, § 6(h), 830 CMR 64H.6.5, and Letter Ruling 12-2.

REFERENCED SOURCES:[Massachusetts General Laws](https://malegislature.gov/Laws/GeneralLaws) (<https://malegislature.gov/Laws/GeneralLaws>)

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